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April 28, 2006

Federal Communication Commission
Bureau / Office

Chairman Kevin J. Martin
 Commissioner Michael J. Copps
 Commissioner Jonathan S. Adelstein
 Commissioner Deborah Taylor Tate

MB Docket No. 05-255

Re: **Full Digital Must-Carry** (CS Docket No. 98-120)

Dear Mr. Chairman and Commissioners:

On behalf of ION Media Networks ("ION")¹ I am writing to you as you return to Washington from your participation at the NAB Convention in Las Vegas this week. This convention reminded us of the great potential of over-the-air television, the possibilities that lie ahead in the digital world and the tremendous gatekeeper challenges that continue to face our industry. On Tuesday, Chairman Martin strongly reaffirmed the commitment to full digital must-carry for broadcast stations and, later that day, Commissioners Copps and Adelstein indicated their willingness to reconsider full digital must-carry in the context of digital broadcasters' public interest obligations. I applaud these statements of support and willingness to re-engage on this issue.

At the very same time that the NAB convention was discussing the opportunities and obligations of the broadcast industry, the FCC was receiving final comments in the proceeding addressing whether major cable television providers have satisfied the 70/70 test contained in Section 612(g) of the Communications Act. The Commission heard from a number of commenters, many of whom argued that the 70/70 test has been met and that the Commission's regulatory authority under Section 612(g) is broad enough to support a broad range of regulatory remedies to combat cable's continuing bottleneck control of local video markets.

¹ ION Media Networks was formerly known as Paxson Communications Corporation and is a network television broadcasting company which owns and operates the largest broadcast television station group in the U.S., as measured by the number of television households in the markets our stations serve. We own and operate 60 broadcast television stations (including three stations we operate under time brokerage agreements), all of which carry our flagship i network programming, including stations reaching all of the top 20 U.S. markets. We provide network programming seven days a week, 24 hours per day, and reach approximately 91 million homes, or 83% of primetime television households in the U.S. through our broadcast television station group and pursuant to distribution arrangements with cable and satellite distribution systems. We are committed to providing a wide variety of programming over our stations that will continue to advance family values, diversity and the public interest. We have constructed digital broadcast facilities for 52 of our 60 stations, and we now are able to provide a significant broadband platform on which to broadcast digital television, including multiple television networks.

I submit that the proceeding on the 70/70 test is the wrong solution to our current problem. The Commission doesn't need the additional statutory authority granted by Section 612(g) to vastly expand the level of video competition and programming diversity. The Commission already has the authority – indeed the mandate – to exponentially increase the amount of diverse local programming available in every market in the country by requiring cable operators to carry the entirety of each broadcaster's digital program stream, including multicast channels. Moreover, full digital must-carry would promote the following congressional and Commission policies:

1. Programming Diversity,
2. Localism,
3. Video Competition,
4. Promoting Broadcast Decency,
5. Preserving a Vibrant Over-the-Air Broadcast System,
6. Ensuring a Successful Transition to DTV, and
7. Encouraging Emerging Broadcast Networks

As the comments in the 70/70 proceeding generally demonstrated, the cable industry meets that threshold which only further demonstrates that cable operators continue to function as the key gatekeepers to competition in local television markets. The Commission should therefore use this information to reinvigorate its reconsideration of its February 2005 decision not to enforce the statutory requirement that cable operators provide broadcasters with full digital must-carry. While Section 612(g) may provide the Commission with an additional tool that it can use to ensure a diversity of local programming, the main lever that Congress provided the Commission to counteract cable operators' bottleneck control is the mandatory carriage provisions of Section 614 of the Act.

The must-carry law was enacted to "(1) preserve[] the benefits of free, over the air local broadcast television, (2) promot[e] the widespread dissemination of information from a multiplicity of sources, and (3) promot[e] fair competition in the television programming market."² To ensure that these goals are met, Congress directed cable operators to carry the "signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels" on their system." By any fair reading of the statute, this must include all digital programming content, regardless of whether it is transmitted in a single high-definition program stream, multiple standard definition program streams, or some combination of the two. Indeed, requiring full digital must-carry would encourage broadcasters to implement full-scale multicasting, which in turn would further at least 7 important congressional and Commission policies including:

² Turner Broad. Sys. v. FCC, 520 U.S. 180 (1997).

1. **Programming Diversity.** By allowing DTV broadcasters to transmit up to six standard definition digital program streams where now they transmit only one, multicasting will create massive quantities of new airtime and accompanying new opportunities for programmers that currently have no outlet for their programming. All the evidence in the Commission's DTV must-carry docket suggests that broadcasters are ready and willing to begin using their multicast channels to roll out diverse programming that has been impossible in the single-channel, single revenue-stream analog world.

Moreover, additional free over-the-air broadcast channels will mean additional chances for content producers to get their programming to viewers. The Commission continues to hear from many programmers, including minority-interest, faith-based, and children's programmers that stand ready to exploit these new opportunities. Today, if a new programming service wishes to build an audience, it must go through cable operators to do so, because pay-TV is the only distribution alternative. In a multicast must-carry world, however, program services would have the opportunity to partner with broadcasters to reach viewers. The major MVPDs stopped adding significant numbers of new networks years ago and unaffiliated programmers need not apply. Multicasting would give these new, diverse voices a chance to be heard, breaking the cable industry's bottleneck control over programming and allowing a flood of new and diverse content to become available to all Americans, be they cable subscribers or over-the-air viewers.

2. **Localism.** Another important benefit of multicast must-carry will be the creation of new local channels of programming operated by local television stations that already are entrusted with serving their local communities. Allowing local television stations to create four or five additional program streams channels would exponentially increase the opportunities for vast new quantities of local public affairs programming, news programming, and political coverage. Already the major television networks and their affiliates have shown that they intend to dedicate much of their multicast spectrum to increased local events coverage of all types. Independent broadcasters and emerging networks like ION would be sure to follow if the Commission recognized their statutory mandatory carriage rights. The only limit on these possibilities is the imagination of local broadcasters and programmers.

3. **Video Competition.** The bottleneck control that this proceeding has shown cable operators continue to exercise over local video markets has been destructive for both broadcasters and viewers. In the absence of competitive discipline, MVPDs long have subjected customers to continual rate increases. Multicasting promises to allow broadcasters to burst through the MVPD bottleneck, restore competitive balance to local television markets, and provide much-needed relief for frustrated MVPD customers. Once multichannel broadcasting becomes the norm, the broadcast platform again will be capable of competing effectively with MVPDs and the competitive pressures on MVPDs likely will require them to offer lower prices without further government regulation. Thus, all viewers will win with full digital must-carry. MVPDs know this, which is why they always have opposed full digital must-carry with a furious lobbying onslaught and persistent threats of

litigation. The truth is that cable operators oppose multicast must-carry because they recognize the competitive threat that multicast must-carry poses to their control of local video markets.

4. **Promoting Broadcast Decency.** Full digital must-carry will be a potent weapon against indecent programming. If it adopts full digital must-carry, the Commission can be confident that nearly every market will gain new free programming outlets that are bound by law to uphold at least the standards of decency demanded as a condition of every television broadcaster's license. Multicasting will give the many broadcasters like ION who are trying to restore broadcast decency even more opportunities to achieve this goal. Equally important, it will give those broadcasters that now respond to the pressure exerted by cable and DBS by airing increasingly indecent programming additional opportunities to provide alternative programming more in keeping with the values of the many Americans who have turned away from television in disgust.

At the very least, the Commission could be certain that every channel of broadcast programming would conform to the Commission's and Congress's requirements that broadcasters operate in the public interest. This would have the salutary effect of ensuring that decent programming has an equal voice on cable systems with the racy and often pornographic programming currently offered by cable operators. If decent programming is given an equal chance, ION is confident it would dilute and crowd out the indecent programming currently being offered with large quantities of new, locally-oriented, and diverse content aimed at viewers who are not being served by the coarse content currently available. Thus, full digital must-carry would fulfill the Commission's mandate to regulate the nation's airwaves in the public interest, and viewers would be guaranteed programming that serves their needs.

5. **Preserving a Vibrant Over-the-Air Broadcast System.** The preservation of a vibrant over-the-air broadcasting service and the improvement of television service to all Americans are two of the Commission's most important objectives. By giving broadcasters the opportunity to offer new diverse, local, decent, and competitive programming, the Commission will fulfill these objectives and ensure that broadcasters have the financial stability necessary for them to fulfill their appointed role as the guarantors of free television service in local markets. Without multicasting, however, local broadcasters will be increasingly lost in the 500 channel digital universe, and there is no guarantee that they will be able to continue to provide the high quality service that has been the historical hallmark of the nation's over-the-air broadcasting service.

6. **Ensuring a Successful Transition to DTV.** Although congress has now ensured that the DTV transition will end by a date certain, the Commission still has much work to do to ensure a successful DTV transition in which broadcasters continue to provide vibrant local service to viewers in the post-transition world. Without full digital must-carry, the Commission has essentially picked existing MVPDs as the winners in the DTV world. Without full digital must-carry, the

competitive position of over-the-air broadcasters will continue to erode and broadcast television will not continue to fulfill its historic local role. Congress plainly intended the opposite result when it directed the Commission to transfer intact from the analog to the digital world the must-carry regime that it designed to preserve the over-the-air broadcasting system. The Commission should not ignore Congress's manifest intent and instead should use full digital must-carry to fulfill Congress's objective that over-the-air broadcasting remain strong and competitive after the transition to DTV.

7. **Encouraging Emerging Broadcast Networks.** To foster competition in the video market, the Commission long has adhered to a policy of encouraging competition by supporting the emergence of new broadcast networks like ION. As the recent merger of the WB and UPN networks shows, the climate for emerging networks has never been more difficult. Full digital must-carry would vastly improve that environment by providing emerging networks with additional programming and revenue opportunities. These opportunities would help ensure the survival of the many faith-based, foreign-language, and general interest programming networks that have been constructed over the past decade.

III. CONCLUSION

As the foregoing demonstrates, not only is full digital must-carry mandated by Section 614 of the Act, it would further a remarkable number of Commission and Congressional policies. Rather than exploring exotic regulatory avenues like Section 612(g) in the first instance, the Commission should exercise its full authority under Section 614 and order full digital must-carry without further delay.

Very truly yours,

A handwritten signature in black ink, appearing to read "Burgess", with a large, stylized flourish at the top.

Brandon Burgess
Chief Executive Officer
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